S.B. Civil Revision Petition No.201/01
Smt. Asha Bai & Anr. Vs. Gulab Devi & Anr.

Date of Order : 07/07/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. Syed Saadawat, for petitioner
Mr. Mahesh Sharma, for respondents

Instant revision petition has been filed by the judgment-debtor against the order dt.16th January, 2001 passed by the Executing Court in Execution Application No.12/98.

The respondent-degree holder herein filed a suit for perpetual and mandatory injunction against the present petitioner with respect to suit property.

Learned trail court decreed the suit vide judgment & decree dated 18th April, 1998 and passed the following order:

> वादनी का वाद विरूद्ध प्रतिवादीगण निम्न प्रकार से डिक्री किया जाता हैं । वादनी के पक्ष मे प्रतिवादीगण के विरूद्ध मेन्डेटरी इंजंकशन इस आशय का जारी किया जाता है कि प्रतिवादीगण चपेटा दीवार उठाकर जीना फिट करे या चपेटा उठाकर लेट्रीन, बाथरूम बनाये तथा अन्य प्रकार से तामीर या फिटिंग करें । नारदाना जो पश्चिमी दीवार से सटकर बनाया गया है उसको पूर्व की भांति दो फिट दूर करे नल बिजली व अन्य प्रकार की फिटिंग जो वादी की दिवार मे फिट करा लिये है तथा जीना फिट करवा लिया है तथा लेटरिन बाथरूम जो पश्चिमी दीवार से सटकर बना दिया है उसे हटावें तथा भविष्य में किसी

प्रकार वादी की पश्चिमी दिवार को क्षतिग्रस्त नही करे । ऐसा कोई कार्य नही करे जिससे दिवार के अन्दर सीम पैदा हो । खर्चा मुकदमा भी वादनी प्रतिवादीगण से प्राप्त करने की अधिकारिणी होगी ।

Since the judgment-debtor failed to carry out the judgment & decree of the trial court, the respondent-degree holder filed Execution Application No.12/98. After affording opportunity and taking note of Commissioner's report, the learned Executing Court passed the order dated 16th January, 2001 where the finding was recorded that after report of Commissioner, he found that the decree of the court has not been properly executed, hence directed the concerned authority to proceed and get the decree executed under the order impugned. Hence, the present revision petition.

Counsel for petitioner Shri Saadawat vehemently contends that the Commissioner in his report has not specifically averred with respect to direction which was referred to in the judgment & decree of the court and against which, objections were raised by him, but the learned Executing Court has not taken note of the same and still directed for execution of decree, which according to him, has been executed in its true spirit.

Counsel for respondents Shri Mahesh Sharma has supported the finding recorded by the learned Executing Court under the order impugned and submits that the Commissioner in his report has specifically mentioned about the decree which was partially not executed by the judgment-debtor and objection made has been specifically noted and only thereafter,

directed to get the decree executed in its true spirit, if not executed so far. In such circumstances, if at all the judgment-debtor submits that decree has been executed direction referred to by the Executing Court under the order impugned otherwise is not going to prejudice the interest of petitioner.

I have considered the submissions made by the counsels and with their assistance perused the material on record.

The learned trial court after taking note of the pleading and hearing submissions of either side, allowed the suit vide judgment & decree dated 18th April, 1998 and it has been specifically referred to what the judgment-debtor is required to note and permanent injunction was made in this regard. Even in the execution application after the Commissioner submitted his report, the objections raised were taken note of and thereafter, detailed specific order has been passed with the direction that decree has still not been executed in its true spirit and directed to get the decree executed under the order impugned.

It is, however, expected from the parties to the dispute to execute the decree in its true spirit and it is really unfortunate that after the decree holder gets the judgment & decree in his favour, as to go from pillar to post for its execution. Even in the instant case, the judgment & decree was passed in favour of respondent way back in 1998 and even after 8 years of decree passed in her favour still she is roaming around the litigation for execution of decree which she got after its due adjudication.

The submission made by the counsel for petitioner that Commissioner has not taken note of the decree in its true spirit and objection submitted by him has not been considered, in my opinion, is without any merit.

From perusal of order impugned and taking note of report as well as objections made and after affording opportunity, a detailed finding has been recorded in this regard. I do not find any error in the finding recorded by the learned Executing Court while passing the order impugned.

Accordingly, the present revision petition fails and is hereby dismissed. The Executing Court is directed to proceed in the matter expeditiously and get the decree executed in its true spirit.

[Ajay Rastogi],J.

FRB